

## **Form 8379, Injured Spouse Allocation (Rev. Dec. 2007)**

**Purpose:** This is the first circulation draft of Form 8379 for your review and comments. The major changes are described below.

**TPCC Meeting:** No meeting is scheduled, but one can be arranged upon request.

**Prior Versions:** The Form 8379 (Rev. Dec. 2006) is available at:  
<http://www.irs.gov/pub/irs-pdf/f8379.pdf>

**Other products:** Circulations of draft tax forms, instructions, notices, and publications are posted at: [http://taxforms.web.irs.gov/draft\\_products.html](http://taxforms.web.irs.gov/draft_products.html)

**Comments:** Please email, fax, or call with any comments by **August 10, 2007**. Also please copy Mark Richter (reviewer) at [Mark.E.Richter@irs.gov](mailto:Mark.E.Richter@irs.gov).

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### **Major Changes to Form 8379, Injured Spouse Allocation (Rev. Dec. 2007)**

The year was updated throughout the form.

#### **Page 1**

- On line 6, we changed “was your main home in” to “were you a resident of” to be consistent with a similar question on the June 2007 version of Form 8857, Innocent Spouse Relief.

#### **Page 2**

- Under “Are You an Injured Spouse,” we deleted the requirement that one had to have reported income such as wages, taxable interest, etc. on the joint return. A taxpayer without taxable income should qualify for injured spouse relief if he or she made estimated tax payments and was not legally obligated to pay the past-due debt.
- Under “When To File,” a tip was added with the websites for more information on refund offsets and debts.
- Under “When To File,” “legally enforceable” was added before “past-due obligations”. SE:W:CAS:AM
- In the instructions for line 6, text was added in the second paragraph to clarify how joint overpayments are applied. SE:W:CAS:AM

### Page 3

- In the line 9 instructions, we added the 2007 basic standard deduction and additional standard deduction for age and blindness. (Rev. Proc. 2006-53) We will add the amounts for 2008 when they become available this fall. We deleted the basic standard deduction and additional standard deduction for 2002 and 2003.
- On the line 12 instructions, we deleted "Allocate any alternative minimum tax as you determine." We were informed that this allocation is done by computer.
- We revised the instructions for line 14. Rev. Rul. 80-7
- Under "How To Avoid Common Mistakes," the sentence in the last bulleted item about contacting FMS was moved to page 2 under "Are You an Injured Spouse?"  
SE:W:CAS:AM

# Injured Spouse Allocation

(Rev. December 2007)

Department of the Treasury  
Internal Revenue Service

▶ See instructions.

Attachment  
Sequence No. **104**

## Part I Information About the Joint Tax Return for Which This Form Is Filed

- 1** Enter the following information exactly as it is shown on the tax return for which you are filing this form. The spouse's name and social security number shown first on that tax return must also be shown first below.

First name, initial, and last name shown first on the return	Social security number shown first	If Injured Spouse, check here ▶ <input type="checkbox"/>
First name, initial, and last name shown second on the return	Social security number shown second	If Injured Spouse, check here ▶ <input type="checkbox"/>

**Note.** If you are filing Form 8379 with your tax return, skip to line 5.

- 2** Enter the tax year for which you are filing this form (for example, 2006) ▶ \_\_\_\_\_
- 3** Current home address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP code \_\_\_\_\_
- 4** Is the address on your joint return different from the address shown above? . . . . .  Yes  No
- 5** Check this box only if you are divorced or separated from the spouse with whom you filed the joint return and you want your refund issued in your name only . . . . .
- 6** Were you a resident of a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin) at any time during the year entered on line 2? . . . . .  Yes  No  
If "Yes," which community property state(s)? \_\_\_\_\_

**Note.** Overpayments affected by state community property laws will be allocated by the IRS according to those laws.

## Part II Allocation Between Spouses of Items on the Joint Tax Return (see instructions)

Allocated Items	(a) Amount shown on joint return	(b) Allocated to injured spouse	(c) Allocated to other spouse
<b>7</b> Income: <b>a.</b> Wages			
<b>b.</b> All other income			
<b>8</b> Adjustments to income			
<b>9</b> Standard deduction or Itemized deductions			
<b>10</b> Number of exemptions			
<b>11</b> Credits ( <b>do not</b> include any earned income credit)			
<b>12</b> Other taxes			
<b>13</b> Federal income tax withheld			
<b>14</b> Payments			

## Part III Signature. Complete this part only if you are filing Form 8379 by itself and not with your tax return.

Under penalties of perjury, I declare that I have examined this form and any accompanying schedules or statements and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Keep a copy of this form for your records	Injured spouse's signature	Date	Phone number (optional) ( )
	Preparer's signature ▶	Date	Preparer's SSN or PTIN
<b>Paid Preparer's Use Only</b>	Firm's name (or yours if self-employed), address, and ZIP code ▶	Check if self-employed <input type="checkbox"/>	EIN
			Phone no. ( )

## General Instructions

### Purpose of Form

Form 8379 is filed by one spouse (the injured spouse) on a jointly filed tax return when the joint overpayment was (or is expected to be) applied (offset) to a past-due obligation of the other spouse. By filing Form 8379, the injured spouse may be able to get back his or her share of the joint refund.

### Are You an Injured Spouse?

You may be an injured spouse if you file a joint tax return and all or part of your portion of the overpayment was, or is expected to be, applied (offset) to your spouse's legally enforceable past-due federal tax, state income tax, child or spousal support, or a federal nontax debt, such as a student loan. To determine if a nontax debt is owed and whether an offset will occur, contact the FMS at 1-800-304-3107 (for TTY/TDD help, call 1-866-297-0517).

You should complete and file Form 8379 if both of the following apply and you want your share of the overpayment shown on your joint tax return refunded to you.

1. You are not legally obligated to pay the past-due amount.
2. You made and reported payments, such as federal income tax withheld from your wages or estimated tax payments, or you claimed a refundable tax credit, such as the earned income credit or additional child tax credit.

**Note.** If your residence was in a community property state (discussed later) at any time during the tax year, you may file Form 8379 if only item (1) above applies.

### Innocent Spouse Relief

Do not file Form 8379 if you are claiming innocent spouse relief. Instead, file Form 8857. An innocent spouse is someone who believes a joint federal tax liability should be paid solely by his or her spouse. You may qualify for relief from liability for tax on a joint return if (a) there is an understatement of tax because your spouse omitted income or claimed false deductions or credits, (b) you are divorced, separated, or no longer living with your spouse, or (c) given all the facts and circumstances, it would not be fair to hold you liable for the tax. See Pub. 971 for more details.

### When To File

File Form 8379 when you become aware that all or part of your share of an overpayment was, or is expected to be, applied (offset) against your spouse's legally enforceable past-due obligations. You must file Form 8379 for each year you meet this condition and want your portion of any offset refunded.

A Notice of Offset for federal tax debts is issued by the IRS. A Notice of Offset for past-due state income tax, child or spousal support, or federal nontax debts (such as a student loan) is issued by the U.S. Treasury Department's Financial Management Service (FMS).



Visit [www.irs.gov/taxtopics/tc203.html](http://www.irs.gov/taxtopics/tc203.html) and [www.fms.treas.gov/faq/offsets.html](http://www.fms.treas.gov/faq/offsets.html), for more information about refund offsets and debts.

### Where To File

See the chart below to determine where to file your Form 8379.

IF you file Form 8379...	THEN mail Form 8379...
with your joint return	and your joint return to the Internal Revenue Service Center for the area where you live.*
by itself after you filed your original joint return on paper	to the same Internal Revenue Service Center where you filed your original return.*
by itself after you filed your original joint return electronically	to the Internal Revenue Service Center for the area where you live.*
with an amended return (Form 1040X) or other subsequent return	to the Internal Revenue Service Center for the area where you live.*

\*See your tax return instructions for the mailing address.

### How To File

You can file Form 8379 with your joint tax return or amended joint tax return (Form 1040X). Or you can file it afterwards by itself.

If you file Form 8379 with your joint return, attach it to your return in the order of the attachment sequence number (located in the upper right corner of the tax form). Enter "Injured Spouse" in the upper left corner of page 1 of the joint return.

If you file Form 8379 separately, please be sure to attach a copy of all Forms W-2 and W-2G for both spouses, and any Forms 1099 showing federal income tax withholding, to Form 8379. The processing of Form 8379 may be delayed if these forms are not attached, or if the form is incomplete when filed.

### Amending Your Tax Return

If you file an amended joint tax return (Form 1040X) to claim an additional refund and you do not want your portion of the overpayment to be applied (offset) against your spouse's past-due obligation(s), then you will need to complete and attach another Form 8379 to allocate the additional refund.

### Time Needed To Process Form 8379

Generally, if you file Form 8379 with a joint return on paper, the time needed to process it is about 14 weeks (11 weeks if filed electronically). If you file Form 8379 by itself after a joint return has been processed, the time needed is about 8 weeks.

## Specific Instructions

### Part I

**Line 6.** If you live in a community property state, special rules will apply to the calculation of your injured spouse refund. Community property states are: Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington, and Wisconsin.

Generally, income, deductions, credits, and expenses are allocated 50/50 between spouses who live in a community property state. Overpayments are considered joint property and are generally applied (offset) to legally owed past-due obligations of either spouse. However, there are exceptions. The IRS will use each state's rules to determine the amount, if any, that would be refundable to the injured spouse. Under state community property laws, 50% of a joint overpayment (except the earned income credit) is applied to non-federal tax debts such as child or spousal support, student loans, or state income tax. However, state laws differ on the amount of a joint overpayment that can be applied to a federal tax debt. The earned income credit is allocated to each spouse based on each spouse's earned income. For more information about community property, see Pub. 555.

Part II

To properly determine the amount of tax owed and overpayment due to each spouse, an allocation must be made as if each spouse filed a separate tax return instead of a joint tax return. So, each spouse must allocate his or her separate wages, self-employment income and expenses (and self-employment tax), and credits such as education credits, to the spouse who would have shown the item(s) on his or her separate return.

Other items that may not clearly belong to either spouse (for example, a penalty on early withdrawal of savings from a joint bank account), would be equally divided. Special rules apply to couples living in community property states (see above).

The IRS will figure the amount of any refund due the injured spouse.

Line 7a. Enter only Form W-2 income on this line. Enter the separate income that each spouse earned.

Line 7b. Identify the type and amount. Allocate joint income, such as interest earned on a joint bank account, as you determine. Be sure to allocate all income shown on the joint return.

Line 8. Enter each spouse's separate adjustments, such as an IRA deduction. Allocate other adjustments as you determine.

Line 9. If you used the standard deduction on your joint tax return, enter in both columns (b) and (c) one-half of the basic standard deduction shown in column (a).

However, if you figured your standard deduction using the standard deduction chart for people age 65 or older or blind in the Form 1040 or 1040A instructions, enter your total standard deduction on line 9, column (a). Allocate your basic standard deduction as explained earlier. Your basic standard deduction is as follows: 2004—\$9,700; 2005—\$10,000; 2006—\$10,300; 2007—\$10,700; 2008—\$XX,XXX. Then use the following worksheet to allocate the additional standard deduction (the difference between the total standard deduction and the basic standard deduction).

- 1. Enter here the total number of boxes checked for age or blindness for yourself at the top of page 2 of Form 1040 or 1040A
2. Enter the additional standard deduction for the year as shown below
Table with years 2004-2008 and amounts: 2004 \$950, 2005 \$1,000, 2006 \$1,000, 2007 \$1,050, 2008 \$X,XXX
3. Multiply line 2 by line 1. Include this amount on line 9, column (b)
4. Enter here the total number of boxes checked for age or blindness for your spouse at the top of page 2 of Form 1040 or 1040A
5. Multiply line 4 by line 2. Include this amount on line 9, column (c)

If you itemize your deductions, enter each spouse's separate deductions, such as employee business expenses. Allocate other deductions as you determine.

Line 10. Allocate the exemptions claimed on the joint return to the spouse who would have claimed them if separate returns had been filed. Enter whole numbers only. For example, you cannot allocate 3 exemptions by giving 1.5 exemptions to each spouse.

Line 11. Allocate any child tax credit, child and dependent care credit, and additional child tax credit to the spouse who was allocated the qualifying child's exemption. Do not include any earned income credit here; the IRS will allocate it based on each spouse's income. Allocate business credits based on

each spouse's interest in the business. Allocate any other credits as you determine.

Line 12. Allocate self-employment tax to the spouse who earned the self-employment income.

Line 13. Enter federal income tax withheld from each spouse's income as shown on Forms W-2, W-2G, and 1099. Be sure to attach copies of these forms to your tax return or to Form 8379 if you are filing it by itself. Also include on this line any excess social security or tier 1 RRTA tax withheld.

Line 14. You can allocate joint estimated tax payments in any way you choose as long as both you and your spouse agree. If you cannot agree, the estimated tax payments will be allocated according to the following formula:

Each spouse's separate tax liability / Both separate tax liabilities x Estimated tax payments

Allocate each spouse's separate estimated tax payments to the spouse who made them.

How To Avoid Common Mistakes

Mistakes may delay your refund or result in notices being sent to you.

- Make sure to enclose copies of all Forms W-2 and W-2G for both spouses, and any Forms 1099 showing income tax withheld to prevent a delay in processing your allocation.
• Clearly write "Injured Spouse" in the upper left corner of page 1 of your joint return.
• Any dependency exemptions must be entered in whole numbers. Do not use fractions.
• Items of income, expenses, credits and deductions must be allocated to the spouse who would have entered the item on his or her separate return.
• Make sure the debt is subject to offset (for example, a legally enforceable past-due federal tax, state income tax, child or spousal support, or other federal nontax debt such as a student loan).

Privacy Act and Paperwork Reduction Act Notice. Our legal right to ask for the information on this form is Internal Revenue Code sections 6001, 6011, 6109, and 6402 and their regulations. You are required to provide the information requested on this form only if you wish to have an overpayment of taxes from a joint return allocated between you and your spouse. We need it to ensure that you are allocating items correctly and to allow us to figure the correct amount of your refund. If you do not provide this information, we may be unable to process your allocation request. Providing false information may subject you to penalties. We may disclose this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.